

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JAMES GEMELAS, On Behalf of Himself and) No. 1:08-cv-00236
All Others Similarly Situated,)
Plaintiff,) CLASS ACTION
vs.) Judge Dan Aaron Polster
THE DANNON COMPANY, INC.,)
Defendant.)

)

AMENDED STIPULATION AND ORDER APPROVING PAYMENTS TO
ELIGIBLE CLAIMANTS AND CY PRES DISTRIBUTION PLAN

The Settling Parties submit this Stipulation and [Proposed] Order to the Court to approve payments to eligible claimants, amend paragraph IV.A.(3)(a) of the Amended Stipulation of Settlement and to approve the plan of cy pres distribution of the Settlement Fund.

WHEREAS, pursuant to the Stipulation of Settlement, all Settlement Class Members who submitted a Claim Form and provided his or her name and mailing address were eligible for the minimum \$15 cash payment. Failure to provide all information requested on the Claim Form (e.g., purchase dates, purchase costs, product names) would not result in nonpayment of the claim. Instead, the Class Action Settlement Administrator was to take all adequate and customary steps to determine the Settlement Class Member's eligibility for payment and the amount of the payment. D.E. No. 54 (Stipulation of Settlement), at §IV.A.(5)(b);

WHEREAS, the Class Action Settlement Administrator initially rejected or paid less than \$15 on the claims of approximately 22,671 Settlement Class Members. The reasons varied, but essentially not enough information was provided to establish a claim in an amount of \$15 and could not reasonably be obtained from the Settlement Class Member. In some cases, for instance, small, odd dollar amounts appeared to be written on the claim form that did not comport with any price for which the products were sold. All of these claims otherwise appear to be legitimate. Therefore, the Settling Parties (with the concurrence of the Class Action Settlement Administrator) have agreed that these claims should not have been denied or paid less than \$15 and instead each should be paid \$15, for a total additional payment of approximately \$340,065. There is ample cash remaining in the Net Settlement Fund to pay these 22,671 eligible claims;

WHEREAS, on June 24, 2010, the Court granted final approval of the Amended Stipulation of Settlement dated January 21, 2010, as amended on May 24, 2010.

Paragraph IV.A.(3)(a) of the Amended Stipulation of Settlement stated that “If the total amount of Defendant Payments is less than \$35,000,000, then Defendant shall donate Products having a total value equal to the difference between the amount of Defendant Payments pursuant to §§IV.A.(2)(a) - (d), above and \$35,000,000 (“Product Donations”) pursuant to the cy pres doctrine in the form of Products to be distributed to one or more charities that help feed the poor in the United States to be jointly chosen by the Settling Parties and approved by the Court. The Products shall be in good, saleable condition and not out of code or past their sale expiration dates at the time they are distributed.” “Products” was defined as the food product marketed and distributed by Defendant under the brand names Activia® or DanActive®, including any variations, formats or line extensions;

WHEREAS, in its Judgment, Final Order and Decree, the Court overruled all objections to the Settlement Plan and found that the plan of distribution of the Settlement Fund, including Paragraph IV.A.(3)(a), was fair, reasonable and adequate. The Court also agreed with the settling Parties that the product donations should be valued at Dannon’s wholesale cost plus all costs and expenses associated with the selection, administration, and distribution of the product donations by Dannon;

WHEREAS, the Settling Parties have consulted and agreed on a plan for cy pres distribution of the Settlement Fund attached as Exhibit A. The Settling Parties agree to Feeding America as the cy pres recipient and to having Feeding American include in its distribution of Product Donations, the Cleveland Food Bank on behalf of the Cleveland Metropolitan Bar Foundation;

WHEREAS, the cy pres plan expands the definition of Product for purposes of product donations to include any commercially sold Dannon dairy products. Feeding America, the charitable organization that will be distributing the product donations, has requested as broad an array of Dannon products as possible as various populations, including children and seniors, face hunger issues;

NOW, THEREFORE, the parties agree as following:

The 22,671 settlement Class Members whose claims were rejected or were paid less than \$15 should be paid \$15;

To amend Paragraph IV.A.(3)(a) of the Amended Stipulation of Settlement to state: "If the total amount of Defendant Payments is less than \$35,000,000, then Defendant shall donate products having a total value equal to the difference between the amount of Defendant Payments pursuant to §§ IV.A.(2)(a) - (d), above, and \$35,000,000 ("Product Donations") pursuant to the cy pres doctrine in the form of products to be distributed to one or more charities that help feed the poor in the United States to be jointly chosen by the Settlement Parties and approved by the Court. Product Donations may include any commercially sold Dannon dairy product. The Product Donations shall have a minimum of twenty-five (25) days of use at the time of entry into the portal of Feeding America.

The Court having considered all papers filed and proceedings conducted in this action, and otherwise fully informed, based on good cause appearing therefore:

IT IS HEREBY ORDERED THAT:

The Settlement Administrator shall pay 22,671 additional eligible Claimants an amount totaling \$340,065 from the Net Settlement Fund. Payment of these claims will complete the claims process and the money remaining in the Settlement Fund will thereafter be used to pay attorneys' fees and cost of administration. Any remaining funds will be returned to Dannon.

The Court hereby approves the plan for cy pres distribution of the Settlement Fund, attached hereto as Exhibit A and finds that it is fair, reasonable and adequate.

The Court approves the proposal set forth above to modify Paragraph IV.A.(3)(a) of the Amended Stipulation of Settlement.

DATED: 7/21/11

/s/Dan Aaron Polster

THE HONORABLE DAN A. POLSTER
UNITED STATES DISTRICT COURT JUDGE

STIPULATED TO BY:

DATED: July 19, 2011

BLOOD HURST & O'REARDON LLP
TIMOTHY G. BLOOD
600 B STREET
SUITE 1550
SAN DIEGO, CA 92101
TEL: 619/338-1100
FAX: 619/338-1101
tbllood@bholaw.com

s/ Timothy G. Blood (by consent)

TIMOTHY G. BLOOD
ATTORNEYS FOR SETTLEMENT CLASS
MEMBERS

LAW OFFICE OF JONATHAN M. STEIN, P.L.
JONATHAN M. STEIN
120 EAST PALMETTO PARK ROAD,
SUITE 420
BOCA RATON, FL 33432
TEL: 561-961-2244
jstein@jonathansteinlaw.com

ROBBINS, GELLER, RUDMAN & DOWD
LLP
CULIN O'BRIEN
120 EAST PALMETTO PARK ROAD
SUITE 600
BOCA RATON, FL 33432
TEL: 561-750-3000
FAX : 561-750-3364
cobrien@rgrdlaw.com

THE CLIMACO LAW FIRM
JOHN R. CLIMACO
SCOTT D. SIMPKINS
DAVID M. CUPPAGE
JENNIFER L. GARDNER
55 PUBLIC SQUARE, SUITE 1950
CLEVELAND, OH 44113
TEL: 216-621-8484
FAX: 216-771-1632
jrclim@climacolaw.com
sdsimp@climacolaw.com
dmcupp@climacolaw.com
jlgard@climacolaw.com

ULMER & BERNE LLP
MICHAEL N. UNGAR
DAVID D. YEAGLEY
SKYLIGHT OFFICE TOWER
1660 W. 2ND STREET, SUITE 1100
CLEVELAND, OH 44113
TEL: 216-583-7000
FAX: 216-583-7001
mungar@ulmer.com
dyeagley@ulmer.com

s/ David D. Yeagley

DAVID D. YEAGLEY
ATTORNEYS FOR DEFENDANT
THE DANNON COMPANY, INC.

ARNOLD & PORTER, LLP
ANGEL A. GARGANA, *pro hac vice*
BETH H. PARKER, *pro hac vice*
ONE EMBARCADERO CENTER
22ND FLOOR
SAN FRANCISCO, CA 94111
TEL: 415-356-3000
FAX: 415-356-3099
angel.garganta@aporter.com
beth.parker@aporter.com

BINGHAM MCCUTCHEN LLC
BRUCE A. FRIEDMAN, *pro hac vice*
1620 26TH STREET, 4TH FLOOR
SANTA MONICA, CA 90404
SANTA MONICA, CA 90404
TEL: 310-907-1000
FAX: 310-907-2000
bruce.friedman@bingham.com

1910301